

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE LITIGATION	)	MDL No. 1456
	)	
	)	Civil Action No. 01-CV-12257 PBS
	)	
THIS DOCUMENT RELATES TO	)	Judge Patti B. Saris
01-CV-12257-PBS AND 01-CV-339	)	Chief Magistrate Judge Marianne B. Bowler

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**AGREED MOTION FOR A BRIEFING SCHEDULE CONCERNING  
PLAINTIFFS' MOTION TO UNSEAL ALL CONFIDENTIAL OR  
HIGHLY CONFIDENTIAL DESIGNATED DOCUMENTS  
USED IN SUMMARY JUDGMENT PROCEEDINGS**

The Track 1 defendants (other than GSK, as to which a stay is in place) and plaintiffs jointly submit this agreed motion for a briefing schedule on plaintiffs' Motion to Unseal All Confidential or Highly Confidential Designated Documents Used in Summary Judgment Proceedings. In support, the movants state as follows:

1. In connection with the cross-motions for summary judgment now pending before the Court, plaintiffs and the Track 1 defendants moved for leave to file under seal several documents, including memoranda of law, declarations, exhibits and other materials.

2. On May 19, 2006, plaintiffs moved to unseal all documents filed in connection with the summary judgment motions. Certain Track 1 defendants' response to plaintiffs' motion is currently due on June 2, 2006, although counsel for the J&J defendants had previously reached an e-mail agreement with a member of the plaintiffs' counsel group to extend J&J's response date to June 9.

3. In a "Procedural Order" dated May 25, 2006 and posted on the Court's ECF system on May 31, 2006, the Court denied the initial motions to seal as to the summary

judgment memoranda of law (except as to private medical information of the named plaintiffs), but provisionally allowed the motions to seal the exhibits, declarations and statements of facts submitted therewith. The Procedural Order gave the parties two weeks to agree to the scope of the redactions in the memoranda of law that would be filed publicly.

4. Upon receipt of the Court's Procedural Order, counsel for Bristol-Myers Squibb Company -- on behalf of all Track 1 defendants not subject to a stay order -- conferred with plaintiffs' counsel about using the two weeks allotted by the Court in the Procedural Order not only to agree on the proper scope of the redactions in the summary judgment memoranda of law, but also to attempt to resolve or at least narrow their disputes as to which exhibits, declarations, fact statements and other summary judgment materials, if any, should remain under seal.

5. As a result of those discussions, the parties have agreed to the following schedule:

- (a) on or before Friday, June 9, each Track 1 defendant other than GSK shall identify to plaintiffs' counsel the summary judgment materials still under seal following the Court's Procedural Order that it believes should remain under seal;
- (b) on or before Wednesday, June 14, plaintiffs shall respond by indicating those materials identified by each defendant as to which plaintiffs' motion to unseal shall remain applicable; and
- (c) on or before Wednesday, June 21, each Track 1 defendant shall respond to plaintiffs' motion to unseal as to those summary judgment materials which remain in dispute.

WHEREFORE, the Track 1 defendants (other than GSK, as to whom the case is stayed) and plaintiffs respectfully request that the Court enter an order establishing the briefing

for plaintiffs' Motion to Unseal All Confidential or Highly Confidential Designated Documents  
Used In Summary Judgment Proceedings in accordance with the above schedule.

Dated: Boston, Massachusetts  
June 2, 2006

Respectfully submitted,

/s/ Steve W. Berman

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Squibb Company, Oncology  
Therapeutics Network, Corp. and  
Apothecon, Inc. (on behalf of all Track  
1 Defendants other than GSK)

### **CERTIFICATE OF SERVICE**

I, Lyndon M. Tretter, hereby certify that on June 2, 2006, pursuant to Paragraph 11 of Case Management Order No. 2, I have caused to be served on all counsel of record a true and correct copy of the foregoing Motion For Leave To File Under Seal by electronic service, by sending a copy of same to Lexis/Nexis File and Serve for posting and notification to all parties.

/s/ Lyndon M. Tretter  
Lyndon M. Tretter